others, the statutes applied expressly to the clubs, leaving the courts no option but to enforce them.[18] In a few cases it would seem that the courts mistook the principles properly applicable to the case before them.[19]

The last point arising in connection with this question, is what construction should be applied to these statutes, and here the conflict seems to be direct and irreconcilable. Since most of the statutes prescribe a penalty for failure to comply with their requirements, a majority of the courts have held them to be penal, and as such to be strictly construed.[20] In the recent case of *State* v. *Missouri Athletic Club* (Mo.), 170 S. W. 904,[21] it was held that they were really remedial, and should be construed liberally to give effect to the legislative intent and to rectify the evils which occasioned their passage. In that case the statute forbade a sale of liquor without a license; the defendant was an incorporated club. The court, while not seeming to recognize the principles laid down above, held properly that it was subject to the terms of the statute, and would be compelled to comply with them or forfeit its charter, and this though it was impossible for the club to obtain a license under the license laws. It would seem that the true rule to govern these constructions should be the public policy of the State where the question arises. If the needs and wishes of the people, of which that policy is the expression, include social clubs within the meaning of the statute, then the statute should be held applicable to them. It may be conceded that this test would be subject to variation, even in the same State at different times, but by means of it the law would be more responsive to the spirit of the time, and it should not prove difficult of application to any case which might come before the courts.

VIOLATIONS OF FEDERAL PEONAGE LAWS BY STATE STATUTES.—The Thirteenth Amendment to the Federal Constitution provides that "neither slavery nor involuntary servitude, except as a punishment for crime of which the party shall have been duly convicted, shall exist within the United States or. any place subject to their jurisdiction," and it further gives Congress power to enforce its provisions by appropriate legislation. The language of this amendment is very broad. While the Fourteenth Amendment serves as a restriction only on action on the part of the States, the thirteenth

[18] Bachelors Club *v.* City of Woodburn, 60 Or. 331, 119 Pac. 339; Commonwealth *v.* Baker, 152 Mass. 337, 25 N. E. 718.

[19] Commonwealth *v.* Ewig, 145 Mass. 119, 13 N. E. 365; Columbia Club *v.* McMaster, 35 S. C. 1, 28 Am. St. Rep. 826. This case may have been decided on the ground that the statutory grant to the city was insufficient to warrant the ordinance in question. The discussion is not very clear.

[20] State *v.* Duke, *supra;* Klein *v.* Livingstone Club, *supra.*

[21] Overruling State *v.* St. Louis Club, *supra,* long cited as one of the leading cases on this subject, "as far as the two are inconsistent."

is intended as a check both on legislation by the States, and also on acts of individuals on their own authority, as well as those under color of State law.[1] It declares absolutely that neither slavery nor involuntary servitude shall exist within the United States. But while the amendment is self-executing, Congress has seen fit to pass legislation to cover some of the various cases which are likely to arise under the amendment, and like the amendment itself such legislation may be primary and direct in its character.[2]

Pursuant to the authority given it by the amendment, Congress passed, in 1867, what are known as the "Peonage Statutes," forming §§ 1990 and 5526 of the U. S. Revised Statutes. Though expressly applying to the whole United States, the statutes were aimed primarily at a system which existed at that time in the territory of New Mexico, under the sanction of the laws of that territory, which had inherited it from Mexico whence it had come from Spain. The institution of peonage differed from slavery; the peon was a freeman with political and civil rights. Usually he voluntarily bound himself by contract to the master for an indebtedness founded upon an advancement in consideration of service. The basal fact was the indebtedness. However the relation was entered into, by contract or not, it was universally true that when once created the service was compulsory and there existed a condition of involuntary servitude.[3] This status or condition of compulsory service is manifestly condemned by the Thirteenth Amendment and the statutes prohibiting it are within the legitimate power of Congress. They have repeatedly been held constitutional by the courts.[4] These statutes abolish and forbid peonage, declare that all State laws by virtue of which any attempt should be made "to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise," shall be null and void, and finally, they provide heavy criminal penalties for violations of the statute.[5]

It is true that most of the violations of this law have been those which were in some way sanctioned by State laws, and which were therefore void. The purpose of this discussion is to inquire into the various ways in which the State statutes have violated the Peonage Laws and on that ground have been declared unconstitutional. In practical effect many State laws have in one way or another made the breach of a labor contract punishable under its criminal laws. These have been uniformly condemned by the courts. They have held that any law which provides the physical compulsion of the criminal laws as a substitute for civil liability as a remedy for the breach of a contract of service, has the effect

[1] See Civil Rights Cases, 109 U. S. 3; Virginia *v.* Rives, 100 U. S. 313.
[2] Bailey *v.* Alabama, 219 U. S. 219; see Civil Rights Cases, *supra.*
[3] Peonage Cases, 123 Fed. 671; Jaremillo *v.* Romero, 1 N. Mex. 190, cited in Clyatt *v.* United States, 197 U. S. 207.
[4] Bailey *v.* United States, *supra;* Clyatt *v.* United States, *supra.*
[5] U. S. Revised Statutes, §§ 1990 and 5526.

of establishing, or at least sanctions, a condition of peonage and hence is invalid.[6] "In contemplation of the law the compulsion to such service by the fear of punishment under a criminal statute is more powerful than any guard which the employer could station."[7]

The type of statute which perhaps furnishes the clearest viola- of the Peonage Laws to be found in any State is one which makes it a penal offence for a person who has contracted in writing to labor for another to break such contract without the consent of the other party, or without sufficient excuse. Instead of the constitutional method of enforcing a contract by obtaining judgment and levying execution, and reaping compensation out of the defendant's property, the effect of this is to give the employer a coercive weapon with which to enforce the contract under guise of lawful means. Where continued service in the performance of a labor contract is obtained from an employee only by actual operation of the criminal law itself, or by threats to call such law into operation, there can be no doubt that a condition of involuntary servitude exists such as is forbidden by the Thirteenth Amendment and the Federal Peonage Laws. Where the legislatures have passed these statutes they have promptly been declared unconstitutional by the courts.[8]

Again, it has frequently been provided by State statutes that one who, with intent to injure or defraud his employer, enters into a contract in writing for the performance of any act or service, and thereby obtains money or property from his employer, and with like intent, and without cause, and without refunding the money or paying for the property, refuses to perform such service, must, on conviction, be punished as if he had stolen it. Obviously, the purpose and effect of this provision is to prevent fraud. It punishes a criminal intent and a criminal act in pursuance thereof. Such a provision would seem constitutional.[9] But some States have gone further than this and by an amendment have made the failure to perform the contract, or to return the money, or to pay for the property, prima facie evidence of the intent to defraud; because, it has been said, of the difficulty of proving the criminal intent under the original statute. But in the face of this prima facie presumption the defendant would have the same difficulty in proving the absence of the criminal intent which the state would have in proving its presence without the presumption. It is well settled that prima facie evidence is sufficient to outweigh the presumption of innocence and unless other evidence is introduced to rebut it calls for conviction.[10] Hence, this statutory presumption would be strong enough to con-

[6] Bailey *v.* Alabama, *supra;* Ex parte Holloman, 79 S. C. 9, 60 S. E. 19, 21 L. R. A. (N. S.) 242, 14 Ann. Cas. 1105; Peonage Cases, *supra.*

[7] Ex parte Holloman, *supra.*

[8] Peonage Cases, *supra;* State *v.* Toney, 141 Ala. 120, 37 South. 332, 3 Ann. Cas. 319; State *v.* Armstead (Miss.), 60 South. 778.

[9] Lamar *v.* State, 120 Ga. 312, 47 S. E. 958. See Bailey *v.* State, *supra.* In this case the statute was held invalid because of the amendment making a breach *prima facie* evidence of criminal intent.

[10] Kelly *v.* Jackson, 6 Pet. 622.

vict and would expose the employee to criminal punishment for the breach of a contract under which he had promised to work out a debt. Thus, the natural effect of its operation would be to furnish compulsion for the performance of a contract of service founded upon a debt. When this provision came before it for decision the United States Supreme Court took the view that, however innocent the purpose of the law might be, its enforcement, or even threats of its enforcement, would create a condition of peonage, and therefore was invalid.[11]

In the recent case of *United States* v. *Reynolds,* 35 Sup. Ct. 86, a somewhat more perplexing situation is presented by a statute under which a person fined for a misdemeanor might confess judgment with a surety in the amount of the fine and costs, and might agree with the surety, in consideration of the latter's payment of the confessed judgment, to reimburse him by working for him under the terms of a contract made by the parties, and approved by the court, the breach of which would render him liable to rearrest, a new prosecution and a new fine for the breach.[12] By the terms of the statute itself, this new fine might be made the basis of a new contract of service with a penalty for its breach. The operation of such a statute gives rise to two questions on which its constitutionality depends: First, whether in such a case the convict is in reality working in payment of a debt which he owes the surety, and, second, whether the labor is performed under such coercion as to become compulsory service for the discharge of a debt.

Is the convict under these circumstances in reality working out a debt which he owes the surety? It has been contended that under

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[11] Bailey *v.* State, *supra,* overruling the decision in Bailey *v.* State, 158 Ala. 18, 48 South. 498.

[12] The statute involved, forming two sections of the Alabama Code, reads as follows:

6846. "Failure of defendant to perform contract with surety confessing judgment for fine and costs.—Any defendant on whom a fine is imposed on conviction for a misdemeanor, who in open court signs a written contract, approved in writing by the judge of the court in which the conviction is had, whereby, in consideration of another becoming his surety on a confession of judgment for the fine and costs, agrees to do any act, or perform any service for such person, and who, after being released on such confession of judgment, fails or refuses, without good and sufficient excuse, to be determined by the jury, to do the act, or perform the service, which in such contract he promised or agreed to do or perform, must, on conviction, be fined not less than the amount of the damages which the party contracting with him has suffered by such failure or refusal, and not more than $500; and the jury shall assess the amount of such damages; but no conviction shall be had under this section, unless it is shown on trial that such contract was filed for record in the office of the judge of probate of the county in which the confession of judgment was had, within ten days after the day of the execution thereof.

6848. "Damages paid to injured party out of fine imposed.—From the fine imposed under the two preceding sections, when collected, the damages sustained by the party contracting with such defendant must be paid to such person by the officer collecting the same."

the provisions of this statute the surety merely becomes the transferee of the right which the State has to exact labor of a convict upon the non-payment of fines. This would not seem to be the case. The State might legitimately compel the convict to work out the unpaid fine for the benefit of the State, either directly, as by labor on public works, or indirectly, as by a lease of convict labor to individuals, as is frequently made. But that the labor under the contract with the surety is in no sense tantamount to the labor which the State might have imposed as punishment is clearly shown by the fact that the State in no way prescribes the character or amount of the service rendered the surety, otherwise than that the contract must be approved by the judge, and also by the fact that the work is neither for the benefit of the State nor under its supervision. It is also to be noted that upon the breach of the contract the remedy which is provided is not for the State, but is for the sole benefit and use of the surety.

Two situations might arise from the confession of judgment by the surety, according to whether he actually pays the fine before the breach, or only becomes responsible for it. When the fine is paid it would seem that the State is entirely eliminated from the transaction, no longer having any claim upon either convict or surety. Since the surety has advanced the money to pay the fine at the prisoner's request, the latter becomes indebted to him for the amount advanced, and by virtue of their contract the relation becomes one of debtor and creditor, with the further provision that the debt is to be worked out upon certain fixed terms.

But in case the surety does not actually pay the fines before the breach of the labor contract the situation becomes slightly more complex. Even in this case if the State accepted absolutely the surety's obligation to pay, and discharged the prisoner from all liability for payment of the fine, or for punishment in default thereof, it would seem equally clear that the relation created is still one of debtor and creditor. The wording of the statute goes to show that the State is in no way interested in the labor contract, which it says, the convict may make "in consideration of another becoming his surety on the confession of judgment." As said by the State court in commenting upon this statute, "the state is in no sense a party to the contract; it permitted the making of the contract and provides a punishment for its breach." [13] Furthermore, upon violation of the contract the prisoner is not proceeded against by the State for the amount of the fine, but the statute expressly provides that on conviction [of breach of contract] he must be fined not less than the amount of the damages which the party contracting with him has suffered by reason of such breach, and not more than five hundred dollars. This provision penalizes the non-performance of a contract, which, though a contract of service, is entered into in consideration of advances made, or to be made, by the employer for the benefit of the employee. Hence it is obvious

[13] State *v.* Etowah Lumber Co., 153 Ala. 77, 78, 45 South. 162.

that the contract creates, or is based upon, the relation of debtor and creditor.

Assuming, then, that there exists the relation of debtor and creditor, it becomes pertinent to inquire what is the effect of the provision of the statute which renders the employee liable to re-arrest, a new prosecution and a new fine. As shown above, the statute provides that if the employee fail to perform his contract without good and sufficient cause, he must on conviction be fined not less than the amount of the damages suffered by the surety, and further that the surety shall be reimbursed out of the fine so imposed. Under the statute the surety might cause the arrest of the employee upon default and the prosecution following would be essentially for the breach of the contract. Not only this, but upon the imposition of a new fine for this breach the convict might undertake to liquidate the penalty by a new contract of a similar nature, and, if this were broken, might be prosecuted again in like manner. As said by the Supreme Court: "The convict is thus kept chained to an everturning wheel of servitude to discharge the obligation which he has incurred to his surety, who has entered into an undertaking with the State, or has paid money in his behalf." [14] The decision in the instant case holding the statute void is clearly in line with the former decisions of the Supreme Court.

[14] United States *v.* Reynolds, 35 Sup. Ct. 86, 89 (principal case).